IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14569 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANDKISHORE BHANIRAM CHOWDHRY - Petitioner(s)

Versus

SECRETARY, REVENUE DEPARTMENT (DISPUTE) & 2 - Respondent(s)

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Appearance :

MR PRITESH L PARIKH for Petitioner(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/09/2005

ORAL JUDGMENT

Though served, nobody appears on behalf of respondent No.3. Heard Ms. Shaheen Qureshi, learned advocate appearing on behalf of the petitioner and Shri Dipen Desai, learned AGP on behalf of the State Government. Rule. With the consent of the learned

advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by Additional Chief Secretary (Appeals), Revenue Department, dated 31st March 2003 in Revision Application No. 20/2002 in dismissing the revision application on the ground of delay.

3. It is the contention on behalf of the petitioner that the petitioner has purchased the property in question by Registered Sale Deed dated 2nd April 1998 and the Non-Agricultural Use Permission was granted by the District Development Officer, Vadodara, dated 31st March 1970. It appears from the record that proceedings came to be initiated by Collector, Valsad, against the original-landowner for breach of condition of the Non-Agricultural Use Permission dated 31st March 1970 as the construction was not put-up within the stipulated time as mentioned in the order dated 31st March 1970 and the Collector, Valsad, by his order dated 23rd February 2000 cancelled the Non-Agricultural Use Permission. It is the case of the petitioner that as the petitioner was not aware of the same subsequently the petitioner applied for copy of the order passed by the Collector, Valsad, dated 23rd February 2000 and on receipt of the same the revision application came to

be preferred before the Additional Chief Secretary (Appeals), Revenue Department, being Revision Application No. 20/2002 which came to be dismissed on the ground of limitation. It appears from the record, in view of the fact that the petitioner was not party to the order passed by the Collector, Valsad, dated 23rd February 2000, naturally the petitioner could not have been served with the copy of the said order and it is to be presumed that the petitioner was not aware of the said order. The aforesaid aspect ought to have been considered by the revisional authority. In view of the above, the order passed by the revisional authority, dismissing the revision application on the ground of delay, requires to be quashed and set aside and the revision application requires hearing on merits.

4. For the reasons stated above, the petition succeeds in part. The order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 31st March 2003 in Revision Application No. 20/2002 is hereby quashed and set aside. The matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, with a direction to decide the said Revision Application in accordance with law and on merits as early as possible, preferably within the period of six months from the date of receipt of this order. It is, however, made clear that this Court has not expressed any opinion on the merits of the

case and it is ultimately for the Additional Chief Secretary (Appeals) to decide and dispose of the same in accordance with law and on merits. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

RMR.